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17 Attorneys for Defendant,
18 Damien Sexton

19
20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22
23) **Case No. CR-07-0742 (EDL)**
24)
25) DECLARATION OF WILLIAM L.
26) OSTERHOUDT IN SUPPORT OF DEFENDANT
27) SEXTON'S *EX PARTE* APPLICATION FOR
28) PRETRIAL ISSUANCE OF RULE 17
29) SUBPOENA DUCES TECUM
30)
31) [F.R.Crim.P. Rule 17(c)
32) and Crim L.R. 47-3]
33)
34) **Date: March 25, 2008**
35) **Time: 10:30 a.m.**
36) **Dept.: Judge Elizabeth D. Laporte**
37)
38)

39 I, William L. Osterhoudt, declare:

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41 1. I am an attorney licensed to practice law in the State of California and before this Court. I
42 am one of the attorneys for defendant Damien Sexton in this action. I submit this declaration in
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46 *Declaration of William L. Osterhoudt In Support of Defendant's Ex Parte Application
47 for Pretrial Issuance of Rule 17 Subpoena Duces Tecum CR-07-0742 (EDL)*

1 support of the defendant's *Ex Parte* Application for Pretrial Issuance of a Rule 17 Subpoena *Duces*
2 *Tecum*.

3 2. Attached hereto is a subpoena *duces tecum* to the custodian of records who possess and/or
4 has control over the following:

5 (a) A flight manifest for United Airlines' Flight No. 189, for the date of March 21, 2007,
6 which flight traveled from Philadelphia to San Francisco;
7
8 (b) A seating chart showing the seat assigned to each passenger on the flight manifest;
9 and
10 (c) Contact information, consisting of the telephone numbers, and the physical and/or
11 P.O. Box addresses, and the email addresses for each person aboard Flight 189, for
12 the date of March 21, 2007.

13 3. The defense seeks the Court authorize a pretrial subpoena to the following individual or
14 entity:

15 (a) Custodian of Records for United Airlines.

16 4. The defense makes this request *ex parte* because we are in need of the documents and
17 information sought herein as quickly as possible in advance of trial, and the prosecution has
18 already told the defense that it wont supply the items sought, nor believes that it legally as required
19 to do so.

20 5. The categories of records requested pursuant to the proposed subpoena are of sufficient
21 particularity and specificity to permit identification by the party subpoenaed. These categories of
22 documents and/or information are believed to be in the possession and/or control of the party and
23 entity named in Paragraph 3 above.

24 6. The categories of records and/or information sought by the proposed subpoena are
25 evidentiary and relevant for the reasons stated in the *Ex Parte* Application for Pretrial Issuance of
26 Rule 17 Subpoena *Duces Tecum* accompanying this declaration. The records and information
27 requested are believed to be in the sole possession of United Airlines, and not otherwise procurable
28 in advance of trial by the exercise of due diligence.

29 7. The defense cannot properly prepare without such production and inspection in advance of
30 trial because only with the aid of the requested information can the defense investigate and

*Declaration of William L. Osterhoudt In Support of Defendant's Ex Parte Application
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1 interview all eyewitnesses and percipient witnesses to the events giving rise to this case. The
2 information held by these individuals is of clear relevance and necessity to the defense in
3 responding to the statements provided in discovery thus far. Potential information from such
4 eyewitnesses is especially important in this case because the few persons interviewed to date have
5 given conflicting accounts of what transpired aboard Flight 189.

6 8. The failure to obtain the information requested in this subpoena may tend to delay the trial
7 due to the critical nature of the materials sought, and because when and if this information is
8 produced the defendant would need time to investigate it prior to presenting his defense.

9 9. The foregoing pretrial subpoena *duces tecum* is proposed for the purpose of reviewing
10 documents and information in the hands of these individuals and entities (the custodian of records
11 for United Airlines) to protect defendant Sexton's right to evidence that bears on guilt and
12 punishment, pursuant to the Sixth Amendment right to process. This application, therefore, is
13 made in good faith and is not intended as a general fishing expedition.

14 10. We respectfully request the Court issue this subpoena on March 25, 2008, so the defendant
15 will have time to fully review the documents and information produced pursuant to the subpoena,
16 pretrial. The proposed subpoena *duces tecum* has a production date of April 8, 2008, two (2)
17 weeks after the hearing on this matter.

18 I declare under penalty of perjury that the foregoing is true and correct, to the best of my
19 personal knowledge and belief. As to any matters stated on belief, I believe them to be true.

20 Executed at San Francisco, California on March 19, 2008.



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WILLIAM L. OSTERHOUDT.

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4 **PROOF OF SERVICE**

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6 I, the undersigned, declare as follows:

7 I am employed in the City and County of San Francisco, State of California. I am over
8 the age of eighteen (18) and am not a party to this action. My business address is 135 Belvedere
9 Street, San Francisco, California 94117.

10 On the date set forth below, I caused to be served the document entitled:

11 DECLARATION OF WILLIAM L. OSTERHOUDT IN SUPPORT OF DEFENDANT
12 SEXTON'S EX PARTE APPLICATION FOR PRETRIAL ISSUANCE OF RULE 17
13 SUBPOENA DUCES TECUM

14 on the party in this action as follows:

15 Allison Marston Danner
16 Assistant United States Attorney
17 450 Golden Gate Avenue
18 San Francisco, CA 94102
19 allison.danner@usdoj.gov

20 X [BY ELECTRONIC SERVICE] Utilizing the ECF system of the United States District
21 Court for the Northern District of California.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24

25

26 DATED: March 19, 2008

27 /s/ Christopher W. Choy
28 Christopher W. Choy

*Declaration of William L. Osterhoudt In Support of Defendant's Ex Parte Application
for Pretrial Issuance of Rule 17 Subpoena Duces Tecum CR-07-0742 (EDL)*